UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,676	12/05/2003	Luis E. Luciani JR.	200314489-1	3179

22879   7590   01/26/2009
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EXAMINER
WALSH, JOHN B

ART UNIT	PAPER NUMBER
2451	

NOTIFICATION DATE	DELIVERY MODE
01/26/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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	Application No.	Applicant(s)
Office Action Summary	10/729,676	LUCIANI ET AL.
	Examiner	Art Unit	
	John B. Walsh	2451	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _13 August 2008_.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-8 and 11-20_ is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-8 and 11-20_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a)☐ All b)☐ Some * c)☐ None of:

   1.☐ Certified copies of the priority documents have been received.

   2.☐ Certified copies of the priority documents have been received in Application No. _____.

   3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
       application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

DETAILED ACTION

Double Patenting

1.   The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

        A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

        Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2.   Claims 1-5, 8, 11 and 13-19 are provisionally rejected on the ground of nonstatutory

obviousness-type double patenting as being unpatentable over claims 7-12 of copending

Application No. 10/728,465. Although the conflicting claims are not identical, they are not

patentably distinct from each other because they are not patentably distinct and anticipate the

claims.

        This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting

claims have not in fact been patented.

Claim Rejections - 35 USC § 102

3.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on
> sale in this country, more than one year prior to the date of application for patent in the United States.

4.   Claims 1-8 and 11-20 are rejected under 35 U.S.C. 102(b) as being anticipated by

"Integrated Lights-Out Technoloy: Enhancing the Manageability of ProLiant Servers".

        As concerns claim 1, a system comprising: a CPU (inherent to have a CPU); a memory

(page 1, paragraph 1) coupled to the CPU, the memory storing programs executable by the

CPU; and a system management processor (page 1, paragraph 1-RISC processor; page 3-ASIC)

coupled to the CPU, wherein the system management processor is operable selectively (page 4-

last paragraph-features of advanced pack are available immediately for a software based

session) to establish hardware-based remote console sessions (page 3, fourth paragraph; page 4-

Hardware-base text remote console) and software-based remote console sessions (page 4-

Advanced features include Graphical Remote console; page 6-Integrated Lights-Out Advanced

features are activated, customers using a graphical OS such as Windows 2000 can also view the

host server console at any time). Note the term operable has been interpreted as "able to

operate" and the functions are not positively and actually performed only that the processor is

"able to operate" in such a way.

        As concerns claims 2 and 13, wherein the programs executable by the CPU support

software-based remote console sessions (page 4-Advanced features include Graphical Remote

console; page 6-Integrated Lights-Out Advanced features are activated, customers using a graphical OS such as Windows 2000 can also view the host server console at any time).

As concerns claim 3, the system of claim 2, wherein the programs executable by the CPU enable data transfer between the system and the system management processor (the term "enable" is not a positive limitation since it only enables data transfer and does not positively recite that the act of data transfer ever takes place; page 3, paragraph 4 – subsystem can monitor host server thus data transfer takes place).

As concerns claim 4, the system of claim 1, wherein the system management processor comprises an application-specific integrated circuit (page 3).

As concerns claim 5, the system of claim 4, wherein the system management processor supports hardware-based remote console sessions (page 3, fourth paragraph; page 4-Hardware-base text remote console) and software-based remote console sessions (page 4-Advanced features include Graphical Remote console; page 6-Integrated Lights-Out Advanced features are activated, customers using a graphical OS such as Windows 2000 can also view the host server console at any time).

As concerns claim 6, the system of claim 1, wherein the system management processor is powered independently from the system (page 5, paragraph 1).

As concerns claim 7, the system of claim 1, wherein when operating a hardware remote console the system management processor tracks changes in a video memory, analyzes the changes, compresses data describing the changes, and sends the compressed data to remote locations (page 5, last paragraph-Console redirection logic-video activity, captures video information, encodes and compresses before transmitting).

As concerns claim 8, a system comprising: a host computer comprising: a CPU (inherent to have a CPU); a memory (page 1, paragraph 1) coupled to the CPU; and a system management processor (page 1, paragraph 1-RISC processor) coupled to the CPU and memory; a remote computer coupled to the system management processor by way of a communication network (page 6, paragraph 4); wherein the remote computer accesses the host computer by way of the system management processor to initiate a remote console session (); and wherein the system management processor selectively switches between a software-based remote console session (page 4-Advanced features include Graphical Remote console; page 6-Integrated Lights-Out Advanced features are activated, customers using a graphical OS such as Windows 2000 can also view the host server console at any time) and a hardware-based remote console session (page 3, fourth paragraph; page 4-Hardware-base text remote console); wherein the remote computer further comprises a software-based remote console applet program (page 9, paragraph 3) and a hardware-based remote console applet program (page 9, paragraph 3), the software-based remote console applet program supporting software-based remote console sessions and the hardware-based remote console applet program supporting hardware-based remote console sessions; wherein the hardware-based remote console applet program controls the software-based remote console applet program (page 11, paragraph 2).

As concerns claim 11, the system of claim 9, wherein the system management processor controls the hardware-based remote console applet program and the software-based remote console applet program (page 3, last paragraph).

As concerns claim 12, the system of claim 8, wherein the system management processor is powered separately from the system (page 5, paragraph 1).

As concerns claim 14, the system of claim 13, wherein the programs enable communications between the CPU and the system management processor (the term "enable" is not a positive limitation since it only enables data transfer and does not positively recite that the act of data transfer ever takes place; page 3, paragraph 4 – subsystem can monitor host server thus data transfer takes place).

As concerns claim 15, a computer system, comprising: a means for executing programs (inherent to have a CPU); a means for storing programs (page 1, paragraph 1) for execution coupled to the means for executing; and a means for providing remote console (page 6, paragraph 4) to the computer system coupled to the means for executing; wherein the means for providing selectively establishes hardware-based remote console sessions (page 3, fourth paragraph; page 4, line 9-hardware based) and software-based remote console sessions ((page 4-Advanced features include Graphical Remote console; page 6-Integrated Lights-Out Advanced features are activated, customers using a graphical OS such as Windows 2000 can also view the host server console at any time).

As concerns claim 16, the computer system of claim 15, wherein the means for storing further comprises programs for execution that support software-based remote console sessions ((page 4-Advanced features include Graphical Remote console; page 6-Integrated Lights-Out Advanced features are activated, customers using a graphical OS such as Windows 2000 can also view the host server console at any time).

As concerns claim 17, the computer system of claim 16, wherein the programs for execution facilitate communications between the computer system and the means for providing (page 3, paragraph 4 – subsystem can monitor host server thus data transfer takes place).

As concerns claim 18, the computer system of claim 15, wherein the means for providing comprises: an application-specific integrated circuit (page 3), the application-specific integrated circuit comprising a microcontroller; and a memory (page 1, paragraph 1) coupled to the application-specific integrated circuit.

As concerns claim 19, the computer system of claim 18, wherein the memory is used for communication between the means for providing and the computer system (page 1, paragraph 1-memory directly and indirectly aides in the performance of the system including communication).

As concerns claim 20, the computer system of claim 20, wherein when operating a hardware remote console the means for providing tracks changes in a video memory, analyzes the changes, compresses data describing the changes, and sends the compressed data to remote locations (page 5, last paragraph-Console redirection logic-video activity, captures video information, encodes and compresses before transmitting).

Response to Arguments

5.   Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

6.   Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Conclusion

7.   In view of the Appeal Brief filed on August 13, 2008, PROSECUTION IS HEREBY

REOPENED. A new grounds of rejection is set forth above.

        To avoid abandonment of the application, appellant must exercise one of the following

two options:

        (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37

CFR 1.113 (if this Office action is final); or,

        (2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an

appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee

can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have

been increased since they were previously paid, then appellant must pay the difference between

the increased fees and the amount previously paid.

        A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing

below.

8.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to John B. Walsh whose telephone number is 571-272-7063. The

examiner can normally be reached on Monday-Thursday from 8:00-6:30.

        If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, John Follansbee can be reached on 571-272-3964. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

like assistance from a USPTO Customer Service Representative or access to the automated

information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John Follansbee/   /John B. Walsh/
Supervisory Patent Examiner, Art Unit 2451   Primary Examiner, Art Unit 2451